

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 20 of 2000

in

SPECIAL CIVIL APPLICATION No 3973 of 1999

with

CIVIL APPLICATION NO. 247 OF 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.JUSTICE D.M.DHARMADHIKARI and

MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SATDADHAR ROAD ASARGRASTHA SAMITI

Versus

COMMISSIONER

Appearance:

MR Mukul Sinha for Appellant

MR P.G.DESAI, for the respondent corporation

CORAM : CHIEF JUSTICE MR.D.M.DHARMADHIKARI and
MR.JUSTICE C.K.THAKKER

Date of decision: 02/2000

CAV JUDGEMENT

Per Thakker:

This appeal is filed against dismissal of SCA No.3973 of 1999 by the learned Single Judge on December 10, 1999.

Appellant was original petitioner No.1 . The case of the appellant was that petitioner No.1 was an Association formed for protecting interest of slum dwellers residing at Amraiwadi, Ahmedabad . The appellant was the convener of the said association. It was asserted by the appellant the appellant (Satadhar Road Asargrasta Samiti) was looking after well being of its members. There were about 135 members who were residing on 60' Satadhar Society Road in Survey No. 88/1 of final plot No. 454 of TPS No.27 of Amraiwadi. Since the road was to be widened, the members of the appellant association who claimed themselves to be tenants and lawful occupants of land, were asked to vacate the land on the ground that the land was required widening of road. The appellant replied to the Collector, Municipal Corporation and other authorities by filing representations that they were adversely affected by communal riots and with the help of the Government and Municipal Corporation, they had constructed their houses. It was also their case that they were not unauthorised encroachers and they could not be asked to vacate the houses occupied by them. It was, however, stated that they were prepared to vacate the premisses if they were given alternate land and breathing time. Since the authorities neither granted time nor alternative site and forcefully attempted to evict them, the appellant association was constrained to approach this Court by filing the above petition.

When the matter was placed before the learned Single Judge, it was argued that the occupants were staying on the land in question since decades and they could not be evicted without offering alternate site. It was also submitted that though a show was made that alternate site had been allotted to the occupants , the entry was merely a paper entry and no possession of land was given to adversely affected occupants. It was also submitted that extent of land must be ear-marked for each of the occupants and only thereafter action of eviction could be taken.

It appears that notice was issued pursuant to which the respondent corporation appeared. On behalf of the

corporation, reliance was placed on a communication dated November 21, 1998, Annexure 'F' to the petition, wherein, it was stated that the occupants had already been offered alternate site being final plot No. 484 of Town Planning Scheme No. 27 (Amraiwadi). It was the case of the corporation that in spite of offer of alternate site, occupants did not shift to the site nor they had vacated final plot occupied by them. According to the corporation, occupants who were entitled to alternate site in the light of the policy of the corporation had been allotted land admeasuring 3 x 4.5 meters i.e. 13.50 sq.mts.

Learned Single Judge then observed in the impugned order that on June 3, 1999, Mr. G.M.Amin appearing for the petitioners had made following statement before the court:

"Members of the petitioners Samiti herein who are at present situated on final plot No.484 of T.P. scheme No.27, but they want some time so that they can remove the structure and erect new structures at the land to be allotted to them by the corporation. However, the corporation has not earmarked the land to be allotted to the members of the petitioners Samiti. It would take some time to earmark the land to be allotted to the members of the petitioner Samiti. They will also have to enter into an agreement with the corporation with respect to the survey numbers which have been allotted by virtue of the order Annexure 'J' to the petition. Therefore, they may be given reasonable time to vacate the premises in which they are at present residing."

The learned Single Judge stated that relying on the above statement of learned counsel for the petitioners, notice was issued and protection was granted in the meanwhile. It was, however, observed that under the protective order of the Court, occupants did not vacate the land for long time and continued to occupy the land in spite of grant of alternate land. They ought to have gone to the alternate site of land by vacating the final plot under the town planning scheme which was earmarked for widening of road, but they failed to do so. It was further observed that the claim of the occupants for allocation of plots of land to each of the occupants was 'too tall.' In the opinion of the learned Single Judge, the occupants were adequately protected by allocation of alternate site

and they were given sufficient time to shift to the alternate site and hence, no further indulgence could be granted to them. The learned Single Judge stated that it would be in the interest of public at large that the final plot in question was made available to the corporation for construction of road as planned and accordingly, the petition was dismissed. It is this order passed by the learned Single Judge which is challenged in the present LPA.

We have heard Mr. Mukul Sinha for the appellant and Mr. P.G.Desai for the respondent corporation appearing on caveat.

Mr. Sinha submitted that the appellants are members of appellant No.1 Association who were lawful occupants of the houses and they were not unauthorized encroachers. They were staying in their houses since decades and no action could have been taken against them by the corporation. It was further submitted that no road was necessary as it does not lead anywhere and merely with a view to evict the appellants that the corporation has come forward with a case that the land was needed for construction of road. It was urged that even if the claim of the corporation is upheld, it was obligatory on the part of the corporation to provide alternate site and it must be sufficient so as to accommodate a family. Our attention, in that connection was invited by the learned counsel for the appellants to a decision of the Supreme Court in Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan, AIR 1997 SC 152. It was also prayed that the Corporation as well as the State may be directed to provide financial help/ assistance so that members of the appellant association may be able to put up construction over the land fit for human habitation. On all these grounds, according to the learned counsel, LPA deserves to be allowed and the order passed by the learned Single Judge deserves to be set aside.

Mr. Desai for the corporation, on the other hand, supported the order passed by the learned Single Judge. He submitted that the appellants had no right, title or interest in the land and they were encroachers. They were, therefore, asked to vacate the land. He submitted that as per the policy of the corporation, a person occupying the land prior to 1976 has been granted alternate site of land. The corporation made detailed inquiry and the persons who were found in possession at the relevant time have been granted alternate site and no grievance can be made by other persons who were not in possession at that time but made unauthorised

encroachment thereafter. He, however, fairly stated that if any person claims to have been in possession since 1976 and yet his claim is negatived or not considered, it is open to such person to file appropriate application to the corporation and on behalf of the corporation, he has stated that the corporation will consider such cases and if the corporation is satisfied that such person was on land and covered by the policy decision of the corporation, he will be granted alternate land. In the instant case, however, according to him, no such person is denied such right and those persons who were found in possession of land since 1976 have been granted alternate site. Regarding extent of land to be given at alternate site, he submitted that a decision was taken to give land as per the policy of the corporation and occupants were informed. According to Mr. Desai, initially, the only prayer before the learned Single Judge was to grant some time so that such persons may shift to other place either on their own, if they would be occupying the land after 1976 or to alternate site given to them if they were occupying it before 1976. Considering that fact, learned Single Judge issued notice and granted interim relief in the meanwhile. It was thereafter not open to the appellants-petitioners to make any additional demand and learned Single Judge has not committed any error of law in dismissing the petition. Mr. Desai also placed reliance on a decision in Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan, AIR 1997 SC 152 and submitted that the Supreme Court has also approved the action of the Municipal Corporation in evicting persons occupying the land after a particular date.

In the facts and circumstances of the case, in our opinion, no interference is called for against the order passed by the learned Single Judge. So far as the first contention is concerned, in our opinion, the stand taken by Mr. Desai on behalf of the corporation sufficiently safeguards and protects those who are otherwise eligible to get alternate site of land. A statement is also made by the learned counsel to which reference has been made in earlier part of this order that if any occupant feels that though he is covered by the policy decision of the corporation and yet is deprived, he will be at liberty to approach the corporation and the corporation will consider his case in accordance with law. We also direct that if such application is made by any occupant, the authorities will consider the same and if his case is otherwise covered by the policy decision, he will be granted benefits which have been extended to similarly situated occupants.

Regarding extent of land, obviously, it is for the authorities to decide as to how much land should be given to affected persons and no writ can be issued in that regard. Mr. Desai is also right in submitting that initially, the prayer before the learned Single Judge was limited to get some time to evict.

Similarly, no direction can be issued to extend financial help. Hence, prayers made on behalf of the appellants cannot be granted.

For the foregoing reasons, in our opinion, there is no infirmity in the order passed by the learned Single Judge and LPA deserves to be disposed of, however with the observation that the appellant or any individual is at liberty to make application to the Municipal Corporation with necessary evidence in support of his/her claim that he/she was in possession of land since 1976 and that his/her case was also covered by the policy decision of the Corporation . If such application is made, the corporation will consider and decide the same in accordance with law.

LPA accordingly stands disposed of. In the facts and circumstances of the case, there will be no order as to costs. No order on civil application.

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